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Protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, submitted in accordance with Commission on Human Rights resolution 2005/80.

* As the report had to be submitted very soon after the Special Rapporteur took over the mandate, he intends to provide more information on his first months of activity in his introductory statement to the Third Committee of the General Assembly.

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Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Summary

The Special Rapporteur submits the present report to the General Assembly pursuant to Commission on Human Rights resolution 2005/80.

This first preliminary report provides a concise outline of the conceptual framework of the mandate. It makes reference to relevant General Assembly and Commission resolutions and acknowledges the work done by the previous independent expert on the protection of human rights and fundamental freedoms while countering terrorism. The Special Rapporteur emphasizes four key features of his mandate, notably complementarity, comprehensiveness, its proactive nature and its thematic approach. These themes will be further developed by the Special Rapporteur in future reports.

I. Introduction

1. The present report is a first preliminary report submitted to the General Assembly by the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism, pursuant to Commission on Human Rights resolution 2005/80. The Special Rapporteur, Martin Scheinin was appointed by the Chairman of the Commission on Human Rights on 28 July 2005 and accepted his appointment on 8 August 2005. This report provides a concise outline of the conceptual framework of the mandate.

2. The General Assembly has addressed issues relevant to the mandate of the Special Rapporteur on several occasions, notably in its resolution 59/191. This resolution, which must be read together with Assembly resolution 59/195 on human rights and terrorism, reaffirms that acts, methods and practices of terrorism are activities aimed at the destruction of human rights and fundamental freedoms. The Special Rapporteur is conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism. Further, he is mindful of the fact that the General Assembly in its resolution 59/195 also reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law. The Special Rapporteur sees the establishment of his mandate as a device to support and advise States in protecting and promoting human rights and fundamental rights while countering terrorism.

3. The independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman, appointed for a one-year term pursuant to Commission resolution 2004/87, in his report to the sixty-first session of the Commission (E/CN.4/2005/103) highlighted several features of a future mandate related to the relationship between human rights and the countering of terrorism. Acknowledging that significant steps had been taken by the United Nations human rights system to address the protection and promotion of human rights in the struggle against terrorism, the independent expert referred to the existence of "gaps in coverage" of the monitoring systems of the special procedures and treaty bodies and the pressing need to strengthen human rights protection while countering terrorism, and recommended that the Commission on Human Rights should consider the creation of a special procedure with a "multidimensional" mandate to monitor States' counter-terrorism measures and their compatibility with international human rights law. In accordance with the above the independent expert made recommendations concerning the attributes that such a special procedure should have, many of which are reflected in Commission on Human Rights resolution 2005/80.

4. The mandate of the Special Rapporteur is contained in paragraph 14 of resolution 2005/80:

> "(a) To make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including, at the request of States, for the provision of advisory services or technical assistance on such matters;
>
> "(b) To gather, request, receive and exchange information and communications from and with all relevant sources, including Governments, the individuals concerned, their families, their representatives and their

organizations, including through country visits, with the consent of the State concerned, on alleged violations of human rights and fundamental freedoms while countering terrorism, with special attention to areas not covered by existing mandate holders;

"(c) To identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms;

"(d) To work in close coordination with other special rapporteurs, special representatives, working groups and independent experts of the Commission, the Sub-Commission and other relevant United Nations bodies;

"(e) To develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies and programmes, in particular with the Counter-Terrorism Committee of the Security Council, the Office of the United Nations High Commissioner for Human Rights, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, human rights mandate holders and treaty bodies, the Sub-Commission on the Promotion and Protection of Human Rights, as well as non-governmental organizations and other regional or subregional international institutions, fully respecting the respective mandates of the above-mentioned bodies and with a view to avoiding duplication of effort;

"(f) To report regularly to the Commission and to the General Assembly".

II. Conceptual framework

5. In the first weeks of exercising his mandate the Special Rapporteur has started to build up his programme of work, which will include elements such as correspondence with Governments, inter alia in the form of letters and urgent appeals; country visits; liaising with a number of actors such as United Nations organs and bodies, regional organizations, etc. as well as regular reporting to the General Assembly and the Commission on Human Rights. In designing the programme of country visits the Special Rapporteur, in addition to a number of other factors, will pay attention to existing information both on human rights violations and on best practices when countering terrorism, and responses received from Governments to letters sent by the Special Rapporteur. Also, at least for the first visits, the existence of a standing invitation to the special procedures will be of relevance in selecting the countries to be visited.

6. In this brief preliminary report to the General Assembly, the Special Rapporteur wishes to emphasize four features of his mandate by way of outlining his envisaged course of action, the implementation of which will be duly accounted for in his future reports.

7. *Complementarity*. When creating the new mandate, the Commission on Human Rights was mindful of the fact that the High Commissioner for Human Rights, several mandate holders of the Commission, as well as human rights treaty bodies are already active in addressing, within their respective mandates, the human rights implications of various counter-terrorism measures. Consequently, it is emphasized in paragraph 14 (b) of the resolution that when exercising his fact-finding functions,

including through country visits, the Special Rapporteur shall give special attention to areas not covered by existing mandate holders. Similarly, paragraph 14 (e) entrusts the Special Rapporteur with the function of developing a dialogue with all relevant actors and emphasizes the need fully to respect the mandates of these other actors, with a view to avoiding duplication of effort. Indeed, it is the intention of the Special Rapporteur to base his work on the complementary nature of his mandate.

8. *Comprehensiveness*. One reason for the added value of the mandate as compared to other procedures is its comprehensive, integrated or all-encompassing nature, apparent from the general reference to "human rights and fundamental freedoms" in the title. Many of the measures to which States are resorting while countering terrorism in today's world — even taken alone, but much more so when considering the cumulative effect of a range of measures — have an impact on the enjoyment of a wide spectrum of human rights. It was this feature that led the independent expert to call for a "multidimensional" mechanism. The comprehensive nature of the Special Rapporteur's mandate is a consequence of the interdependent and indivisible nature of all human rights. In addition, and as emphasized by the independent expert, the assessment of the human rights impact of counter-terrorism measures must be done in the context of international law, international humanitarian law and refugee law.

9. *Proactive nature*. The Special Rapporteur will build upon those elements of resolution 2005/80 that could be described as proactive and non-confrontational, while making use of the instruments generally available to special rapporteurs, such as letters of allegation, urgent appeals and visits to countries where human rights violations are allegedly occurring in the course of the implementation of counter-terrorism measures. For example, paragraph 14 (a) of the resolution entrusts the Special Rapporteur with the function of suggesting advisory services and technical assistance to Governments. It is evident that such a function may yield its best results when it is exercised in a proactive fashion, i.e. in relation to counter-terrorism measures under consideration. Further, paragraph 14 (c) entrusts the Special Rapporteur with the task of identifying, exchanging and promoting best practices of counter-terrorism measures that respect human rights and fundamental freedoms. The Special Rapporteur is placing himself at the disposal of Governments, and other relevant actors, in order to perform this task, inter alia by undertaking studies on existing or envisaged pieces of legislation on counter-terrorism measures, by producing written comments based on these studies, and by being available for hearings before, for instance, parliamentary committees or national human rights institutions. It is the intention of the Special Rapporteur to identify and promote such best practices throughout the term of his mandate, and to produce a compilation of such practices. A third related feature of the resolution is contained in paragraph 14 (e), concerning dialogue and cooperation.

10. *Thematic approach*. It is the intention of the Special Rapporteur to complement his country-specific work with thematic studies on substantive issues in the field of protection and promotion of human rights and fundamental freedoms while countering terrorism that are not being addressed under other special procedures or by human rights treaty bodies. Without aiming to be exhaustive, or even to indicate an order of priority, the Special Rapporteur wishes to mention three such areas for possible thematic studies: (a) the effects of counter-terrorism measures in relation to freedom of association and assembly; (b) the effects of counter-terrorism measures in relation to economic, social and cultural rights, with

emphasis on specific rights that are not covered by an existing special procedure; and (c) the threat of suicide attacks as a specific challenge to the protection and promotion of human rights and fundamental freedoms while countering terrorism.